



July 10, 2008

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

**Re: Notice of ex parte presentation, XM/Sirius Merger (MB Docket No. 07-57), Early Termination Fees (Docket No. 05-194)**

Dear Ms. Dortch:

On July 9, 2008, Chris Murray (Senior Counsel) and Joel Kelsey (Policy Analyst) of Consumers Union met with Commissioner Copps and Rick Chessen, Amy Blankenship and Wayne Leighton in Commissioner Tate's office, and Rudy Brioché in Commissioner Adelstein's office. In these meetings they discussed the merger of satellite radio companies XM and Sirius, as well as potential action from the agency to eliminate state lawsuits on early termination penalties for wireless companies.

Regarding XM/Sirius, we noted our concerns that the parties have not adhered to the terms of their licenses, which required them to design an interoperable radio. We requested that the Commission make available certain "highly confidential" documents relating to whether the parties complied with their license terms, and highlighted concerns with the merger consistent with our prior filings in this docket.

Pertaining to early termination fees, we noted that Verizon recently settled its litigation on early termination fees, and underscored that these suits contain legitimate legal questions and are by no means merely nuisance suits; as such, the FCC should not act to eliminate these suits in exchange for meager consumer benefits.

We are concerned that consumers are not getting as much benefit as the phone companies claim, given economic testimony presented to the FCC by Lee Selwyn. This testimony indicated that using the phone companies' own data, the average consumer "subsidy" for handsets is only \$14.33. The claim that early termination fees are mostly an exchange for consumers' free phones is not even colorable. As we have stated before in this docket, early termination penalties are nothing more than gravel in the gears of a free market.

It is our hope that the agency will not act to eliminate the remaining state lawsuits as the phone companies have requested, but instead create a new docket aimed at constraining unreasonable penalties. Phone companies, like all other businesses, should have to abide by the law of contracts in all 50 states.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Murray". The signature is fluid and cursive, with the first name "Chris" and last name "Murray" clearly distinguishable.

Chris Murray, Senior Counsel  
Consumers Union